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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,815	09/12/2003	Harvey Theodore Young	48973/THD/K163	7049
23363 7590 06/14/2007 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER CHAPMAN, GINGER T	
			ART UNIT	PAPER NUMBER
			3761	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/660,815

Applicant(s)

YOUNG, HARVEY THEODORE

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 17,26,28,29 and 34-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16,18-25,27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Species 1, claims 1-33 in the reply filed on 28 March 2007 is acknowledged. The traversal is on the ground(s) that claims are never species and that claims 1-16, 18-25, 27 and 30-45 are directed to species corresponding to Figures 1 and 17. This is not found persuasive because of the mutually exclusive characteristics of the species, as detailed in the election requirement, i.e., one claim recites limitations that under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. In other words, the claims restricted to different species recite the mutually exclusive characteristics of such species, as detailed in the requirement for restriction, and additional searches would, of necessity, be required for the combinations of species.

Applicant is reminded that upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which depend from or otherwise include all of the limitations of an allowable generic claims as provided by 37 CFR 1.141.

Should Applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 3d USC 103(a) of the other species.

Claims 34-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

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Applicant timely traversed the restriction (election) requirement in the reply filed on 28 March 2007.

The requirement is still deemed proper and is therefore made FINAL.

Specification

Withdrawn objections:

The objection to the specification made of record in the previous Office action is withdrawn in view of Applicants' amendment to the Abstract received on 5 October 2006.

Drawings

The drawings were received on 5 October 2006. These drawings are acceptable.

Status of the claims

Claims 1-45 are pending in the application, claims 17, 26, 28-29 are withdrawn by way of Applicants amendment, claims 34-45 are withdrawn from consideration as being drawn to nonelected species. Claims 1-16, 18-25, 27 and 30-33 are examined on the merits.

Claim Objections

Claims 32 and 33 are objected to because of the following informalities: Claims 32 and 33 recite the limitation "the heat bar" in line 1. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9, 16, 18-22, 24-25, 27, 30, & 32-33 are rejected under 35 U.S.C. 103(a) as being obvious over Smith et al. (6,974,447).

Smith et al. (hereafter Smith) discloses a receptacle, that is a flexible bag, made of a flexible front sheet sealed to a flexible back sheet and having at least one port, which is a nozzle having an internal diameter, molded to the bag at an attachment point seen to be an attachment flange. The attachment flange is part of the bag and therefore has a first and a second layer joined together. The attachment flange has a first opening and a second, larger opening and comprises a fin (120)(see figures 5-8). With respect to the limitation of claim 1 setting forth the contacting and heat sealing the layers using a heat bar, and claim 3 requiring a molding step, and claim 32-33 requiring a heat bar, these limitations are considered to be met by the manufacturing process disclosed by Smith.

With respect to the limitations of a distance measured between the two ends of the attachment flange being larger than an internal diameter of the nozzle, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the distance of the flange of Smith as a matter of obvious design choice. Whether the distance between the ends solves any particular problem or produces any unexpected result, the distance is merely a matter of engineering design choice and does not serve to patentably distinguish the

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claimed invention over the prior art since the provision of size adjustability is within the skill of an ordinary worker in the art.

With respect to claims 8 and 9, Smith also discloses that the bag may be made of a multi-layer film which inherently includes three layers (col. 10, lines 14-35).

With respect to the claim limitations of claims 21, 22, 24, and 28 the port is shown to have a cap that may be covered by a membrane film or a releasably sealed septum. With respect to claims 18 & 27, this seal is also seen as a drain seal and is punctual.

With respect to claim 30, the recitation that the port is "adapted to receive a spike" has not been considered sine it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. ('447) in view of Smith et al. (6,846,305).

Smith '447 discloses the invention substantially as claimed, see rejection to claim 1 supra; however, Smith fails to disclose specifically that the bags distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, that a second layer is made from PEBA or EGM, and that a third layer is made from SEBS if the second is EGM or carboxy modified polypropylenes if the second is made from PEBA; Smith '447 also fails to disclose specifically that the port is made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, that the blend is in a weight-weight ratio of about 90:10 to about 70:30 of polypropylene-ethylene random copolymer and SEBS elastomer.

Smith '305 teaches of bag to be made of a port made from a blend of layers in the materials of distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer that is a blend is in a weight-weight ratio of about 80:20 of polypropylene-ethylene random copolymer and SEBS elastomer. This encompasses the claimed range. Smith '305 also teaches that the port being can be made of these same materials and ratios. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the multi-film layered bag of Smith '447 having either or both a bag and a port having layers in the materials of distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, since applicant has not set forth any criticality to the materials and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416.

With respect to the limitations that a second layer is made from PEBA or EGM, and that a third layer is made from SEBS if the second is EGM or carboxy modified polypropylenes if the second is made from PEBA if desired, since applicant has not set forth any criticality to these materials or the specified order as claimed. Also, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416.

Applicant is also reminded that arguments toward the criticality of an element will generally be given little patentable weight. The basis for criticality should be clearly disclosed in the specification or supplied by affidavit. See *In re Cole*, 140 USPQ 230 (CCPA 1964).

Claims 23 & 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith '447, as applied to the rejection of claim 1, in view of Domkowski et al. (6,280,431).

Smith '447 discloses the invention substantially as claimed, see rejection to claim 1 supra; however, Smith fails to disclose specifically that the port has a film innerseal affixed to the port or that the attachment flange is a pyramid shape. Domkowski discloses a bag having a port wherein the port has a film diaphragm (col. 17, lines 16-30). At the time of the invention, it would have been obvious to choose a foil to make the membrane since applicant has not set forth any criticality to the materials and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416.

Domkowski further shows that the attachment area, or flange, is in the shape of a pyramid (see figure 9). It would have been obvious to one having ordinary skill in the art to modify the shape of the attachment flange of Smith '447 to be a pyramid shape with a truncated top as a matter of design choice. Whether the pyramid shape solves any particular problem or produces any unexpected result, the pyramid shaped attachment characteristics is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. See *In re Kuhle*, 526 F.2d.553, 188 USPQ7 (CCPA 1975).

Response to Arguments

Applicant's arguments with respect to claims 1-16, 18-25, 27 and 30-33 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
06/09/07



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

